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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TRACY GILLIS, individually and as guardian for A.M.K., and A.M.K., both minors. Plaintiffs, v. CHANDRA E. CHAPMAN, in her individual capacity and as an official of the State of Oregon; KELLY HICKMAN, in her individual capacity and as an official of the State of Oregon; JORDAN MEYER, in his individual capacity and as an official of the State of Oregon; DIANE BEECHINOR, in her individual capacity and as an official of the State of Oregon, LINDA CANIZALES, in her individual capacity and as an official of the State of Oregon, CLYDE SAIKI, Director of the Oregon Department of Human Services in his official capacity; the OREGON DEPARTMENT OF HUMAN SERVICES. Defendants.	U.S. District Court Case No. **COMPLAINT** (42 U.S.C. § 1983: 4th Amendment Unreasonable Search; 4th Amendment Unreasonable Seizure; Interference with Familial Association, Procedural Due Process, Substantive Due Process, Negligent Failure to Investigate, Negligent Failure to Train and Supervise, Declaratory Relief) JURY TRIAL REQUESTED

JURISDICTIONAL ALLEGATIONS

1.

This claim arises under 42 U.S.C. § 1983, the Fourth and Fourteenth Amendment of the United States Constitution. This Court has jurisdiction of Plaintiff's federal law claims pursuant to 28 U.S.C. § 1331, 42 U.S.C. § 1988, 28 U.S.C. § 2201. This Court has Supplemental jurisdiction over State law claims pursuant to 42 U.S.C. § 1367. A tort claims notice against the State of Oregon was timely submitted.

2.

Costs and attorney fees may be awarded pursuant to the Civil Rights Act as amended, 42 U.S.C. § 1988.

ALLEGATIONS OF STATUS

3.

At all relevant times herein, Plaintiff Tracy Gillis was a citizen of the United States residing in the City of Eugene located in Lane County, Oregon. At all material times herein Plaintiff Gillis is the custodial parent of the minor children A.M.K., and A.M.K.

4.

At all relevant times herein Defendant State of Oregon is charged with and responsible for appointing, promoting and supervising, through the Oregon Department of Human Services, the employees of the Children's Services Division of the Department of Human Services and its personnel. At all relevant times herein, the State of Oregon had the power, right and duty to train, control and supervise the manner in which employees carried out the objectives of their employment, and to see that all orders, rules, training, instructions and regulations promulgated by the Children's Services Division, and the actions of its employees, consistent with State and Federal Constitutions and Federal and State Statutes and laws.

5.

At all relevant times herein, Defendants were employees of the Oregon Department of Human Services. Defendants Chapman, Hickman, Meyer, Canzales and Beechinor are caseworkers directly involved in the case and were supervised by the Oregon Department of

Human Services. The acts of Defendants Chapman, Hickman, Meyer and Beechinor and Canzales, which are the subject of this lawsuit, were undertaken unlawfully under color of state law in the regular course of their employment for Defendant State of Oregon. They are sued in their individual capacity under federal claims. Upon information and belief, Defendants are residents of Lane County, Oregon.

6.

At all relevant times herein, Defendants Chapman, Hickman, Meyer, Canzales and Beechinor were acting in their official and individual capacities under color of state law.

FACTUAL ALLEGATIONS

7.

At all material times herein, Plaintiff is the mother and custodial parent of the minor children A.M.K. and A.M.K. and was awarded the majority of parenting time pursuant to a Stipulated General Judgment entered in the Lane County Circuit Court on March 26, 2014.

8.

In the fall of 2014, Plaintiff became concerned over a number of statements as well as drawings by her children that suggested evidence of sexual abuse, possibly by their father. Without making any accusations, Plaintiff immediately sought the assistance of DHS and enrolled her children in counseling with private family therapist Rachel Cudmore to help determine if the statements made by her children were reasons to be concerned and/or required further investigation.

9.

Initially, DHS caseworker Chandra Chapman undertook a cursory interview of the children in the fall of 2014 and despite some concerning disclosures, including disclosures made in a forensic interview, nevertheless concluded, without any substantiating evidence, that there was no reason for concern and that Plaintiff may have been coaching the children and was seeking to cause parental alienation against their father in order to obtain advantage in a future custody dispute and despite that Plaintiff already had custody and the majority of parenting time.

10.

Beginning in August 2014, Defendant Chapman in her individual capacity and as an official of the State of Oregon, contacted Plaintiff's children's counselor, Rachel Cudmore, and requested that Ms. Cudmore provide information to corroborate Chapman's theory that Plaintiff was engaged in behavior that would cause parental alienation against the children's father. From August 2014, without Plaintiff's knowledge or consent, Defendants Chapman and the Oregon Department of Human Services colluded with Ms. Cudmore to obtain and fabricate information about Plaintiff in order to build a dependency case against Plaintiff. Between May 2015 and January 2016, the child support division of the Oregon Department of Human Services regularly exchanged protected information about Plaintiff and Plaintiff's children with Cudmore without parental consent or a release of information.

11.

On April 30, 2015, Defendant Meyer removed the child A.M.K. from her classroom and interviewed the child at her elementary school. At no time did Defendant Meyer obtain a warrant, contact the minor child's custodial parent to obtain parental consent, provide a counselor or attorney to the child or provide the child with an advocate who could explain the right against self-incrimination, or to request that an advocate or parent be present.

12.

The Lane County Child Protective Services Division of the Oregon Department of Human Services has a custom and policy of seizing children from classrooms and subjecting them to custodial interrogations without a warrant, parental consent, or exigent circumstances, and a custom and practice of not informing the parents either during or after the interview.

13.

On May 4, 2015, Plaintiff's ex-husband Darin Kundert was instructed by Defendants Meyer and Hickman to file and did file an *ex parte* a petition for emergency temporary custody in the Lane County Circuit Court, alleging that the children were in imminent danger due to Plaintiff's purported "coaching" of the children to disclose physical abuse, and requested that the children not be allowed to return home with Plaintiff. That motion was denied, Mr. Kundert was instructed by the Circuit Court to return the children to Plaintiff and a hearing was set in five days. Kundert filed a concurrent motion to modify custody and parenting time. Immediately after being ordered by the Circuit Court to return the children to the Plaintiff, DHS intervened in the absence of exigent circumstances or a warrant or court order, and instructed Mr. Kundert not to return the children to Plaintiff.

14.

DHS, through caseworkers Meyer and Hickman, promptly filed a petition for dependency jurisdiction alleging that Mother has endangered the welfare of the children and that "Father lacks a custody order that allows him to act proactively." At the recommendation of DHS, the juvenile court ordered that temporary custody of the children be placed with DHS while the jurisdictional hearing was pending in the normal course. DHS then determined that Plaintiff should be allowed only one hour of supervised visitation per week based on the fact that the children would be in imminent danger of abuse if Plaintiff had unsupervised visitation. Plaintiff was effectively denied an immediate post-deprivation probable cause hearing.

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15.

On May 6, 2015, an original hearing was held in the Lane County Juvenile Court in which Plaintiff denied the allegations of the petition for dependency jurisdiction. The matter was then set for a fact-finding (jurisdictional hearing). DHS maintained that the jurisdictional hearing should be heard after the custody matter was determined since the custody case could be dispositive and DHS would vacate jurisdiction provided Mr. Kundert obtained custody. DHS successfully obtained an order requiring that the custody case in family court be heard first. After at least one postponement, the custody trial was scheduled for January 26, 2016, effectively forestalling the dependency jurisdictional hearing until no earlier than February 2016, at least 9 months after Plaintiff was denied unrestricted access to her children. Defendant Meyer and Beechinor stated to Plaintiff at a mandatory family safety meeting that once Mr. Kundert obtains custody, DHS would move to vacate jurisdiction, and DHS has maintained throughout that the dependency jurisdiction would be vacated upon conclusion of the custody case.

16.

At all relevant times herein, Defendants have colluded with Darin Kundert, the children's father, to assist him in obtaining a modification of custody and parenting time that would indefinitely limit Plaintiff to supervised visitation regardless of child welfare safety concerns.

17.

At all relevant times herein, the Oregon Department of Human Services and it employees of the child services division owed a continuing duty to investigate the truth of allegations against a parent in a dependency case in which the agency seeks to obtain jurisdiction over the family and further, to investigate reasonable claims of abuse against a child.

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18.

At all relevant times herein, Defendants e failed to undertake an adequate, independent investigation raised by the children's disclosures to third parties that meets the standard of care required by child protective services in investigating a disclosure of potential child abuse.

19.

At all relevant times herein, Defendants failed to undertake an adequate, independent investigation that meets the standard of care required by child protective services as to whether Plaintiff had an objectively reasonable basis to place the children in counseling in order to determine whether there was a basis for concern for the children's disclosures and other evidence that Plaintiff and Plaintiff's children found concerning, and whether the children's welfare was endangered by Plaintiff's actions. Defendants were further negligent in either failing or actively refusing to investigate evidence that conflicted with the allegations set forth in the dependency petition, including but not limited to drawings made by the children, police reports, disclosures made in Kid's First Interviews, and interviews with other essential witnesses.

20.

During the pendency of the dependency case and at all material times herein, Defendants have withheld exculpatory evidence and have materially altered documents to misrepresent what was stated by Plaintiff and her children in supervised visits and interviews with the Plaintiff and other witnesses, including but not limited to treatment records made by the children's counselor, in order to cast Plaintiff in a negative light; support the dependency allegations against Plaintiff; support the allegations of the opposing party in a private custody modification case; alienate Plaintiff's children and misrepresent the circumstances and conditions that have led DHS to deprive Plaintiff of her right to parent her children.

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21.

At all relevant herein, Defendants exchanged confidential and protected patient information regarding the children and Plaintiff with the children's counselor without the permission or knowledge of Plaintiff.

22.

Defendants' actions, including the unlawful removal of Plaintiff's children in May 2015, has caused irreparable harm to both Plaintiff and her children and Plaintiff has suffered emotional and mental distress as a direct and foreseeable result and has deprived Plaintiff of a fundamental liberty interest in her substantive and procedural due process rights under the 14^{th} Amendment of the Federal Constitution. Defendants have further deprived Plaintiff of her right to be free from unreasonable seizures under the 4^{th} Amendment of the Federal Constitution.

23.

Defendants have unlawfully colluded with the children's father, Darin Kundert, to interfere in Plaintiff's court ordered custody and parenting time by placing Plaintiff's children with Mr. Kundert in violation of the custody order, limiting Plaintiff's parenting time to one hour a week, and directing Mr. Kundert to file a an action for modification of custody and parenting, a civil proceeding in the state circuit court. Defendant has explicitly stated that once the custody order is modified, Defendant will dismiss its petition in the juvenile court but that until such time, Defendant will retain jurisdiction irrespective of whether there is a significant child welfare concern. By colluding to initiate a civil proceeding over which Defendant has no jurisdiction and under color of state law, and by removing Plaintiff's children from her care for the explicit purpose of assisting an opposing party to obtain a custody order, Defendants have deprived Plaintiff of a fundamental liberty interest in her substantive and procedural due process rights under the 14^{th} Amendment of the Federal Constitution.

24.

It is a regular practice of Defendant Oregon Department of Human Services in Lane County to remove and place children in protective custody and alleging parental unfitness based on a custody order that the Oregon Department of Human Services in Lane County finds to be inadequate or deficient and despite an absence of imminent danger of serious injury to the welfare of a child.

25.

It is a regular practice of Defendant Oregon Department of Human Services in Lane County to remove and place children without a warrant or a petition filed with the court alleging imminent danger as grounds for removal, or in the absence of exigent circumstances of imminent danger of serious bodily injury, in violation of a parents' familial and due process rights under the Fourteenth Amendment of the Federal Constitution, which must afford a parent with an evidentiary hearing in a reasonable time.

26.

On June 14, 2016, the Lane County Circuit Court finally determined at a jurisdictional hearing that the Oregon Department of Human Services did not have, nor ever had a basis for dependency jurisdiction of Plaintiff's children; that Plaintiff had never acted improperly and that Plaintiff acted reasonably by attempting to seek counseling given the statements of the children's disclosures. The Circuit Court promptly vacated wardship.

FIRST CLAIM FOR RELIEF

(Interference with Familial Association, 14^{th} Amendment Substantive Due Process)

27.

Plaintiff re-alleges and reincorporates paragraphs 1 through 26 above.

28.

Defendant Oregon Department of Human Service's Supervisors and Officers failed to sufficiently train or supervise Defendants Chapman, Hickman, Meyer, Canazales and Beechinor so that caseworkers of the Oregon Department of Human Services acting under color of State law would comply with the Constitutional rights of Plaintiff. The action of Defendants Chapman, Hickman, Meyer, Canazales and Beechinor showed a callous or reckless disregard for the rights of Plaintiff.

29.

Defendants' wrongful actions described herein violated Plaintiffs' right to be free from unlawful interference with familial association guaranteed by the Fourteenth Amendment to the United States Constitution, and the right to be free from unlawful seizures under the 4th Amendment of the United States Constitution. Plaintiff is informed and believes and thereon alleges that the right of familial association guaranteed under the Fourteenth Amendment and the right to be free from unreasonable and unlawful seizure under the Fourth Amendment are "clearly established" such that a reasonable social worker and or officer acting under color of state law would know it is unlawful to remove a child from the care, custody and control of its parents in the absence of exigent circumstances that would constitute imminent danger of serious bodily injury, and without first obtaining a warrant.

30.

Defendants Chapman, Hickman, Meyer, Canazales and Beechinor were acting under color of state law when they acted, agreed, and/or conspired to unlawfully remove Plaintiff's children without proper justification or authority, and without probable cause, exigency or court order. Further Defendants' actions were taken with deliberate indifference to Plaintiff's rights.

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31.

Defendants maliciously conspired to violate the civil rights of Plaintiff, including violation of Plaintiff's right found in the Fourth and Fourteenth Amendments of the United States Constitution, by, but not limited to, removing and continuing to detain Plaintiff's children from the care, custody and control of their mother, Plaintiff Gillis, without proper or just cause, authority or consent.

32.

By these actions, Defendants interfered and/or attempted to interfere with Plaintiff's constitutional rights to familial association under the Fourteenth Amendment, the right to be free from unlawful and unreasonable seizure guaranteed by the 4th Amendment, as well as the those rights under State law rising to the level of a federally constitutionally protected right.

33.

Plaintiff is entitled to all remedies provided by 42 U.S.C. § 1983.

34.

As a direct and proximate result of Defendants' wrongful actions, Plaintiff and Plaintiff's children suffered emotional and mental injury including but not limited to post traumatic stress, anxiety, fear for the safety of her children, and depression. Plaintiff has been damaged due to the interruption of an interference with the relationship with her daughters caused by Defendants and that damage is valued at three hundred thousand ($300,000.00) dollars. Plaintiff has suffered emotional distress in the amount of three million ($3,000,000.00) dollars.

35.

As a further result of Defendants' wrongful actions, Plaintiff is entitled to recover reasonable costs and attorney fees incurred herein.

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36.

The actions of the Oregon Department of Human Services and caseworkers Defendants Chapman, Hickman, Meyer, Canazales and Beechinor, acting in their individual capacity were either malicious or reckless in disregard of the rights of Plaintiff and punitive damages, in an amount to be determined by a jury or judge, should be awarded against Defendants to punish Defendants for wrongdoing and to prevent Defendants and others from acting in a similar manner in the future.

SECOND CLAIM FOR RELIEF

(Section 1983; Procedural Due Process)

37.

Plaintiff re-alleges and reincorporates paragraphs 1 through 26 above.

38.

Plaintiff has been unlawfully deprived of her rights of procedural due process or has been subject to inadequate, defective or unlawful legal process that is grossly inconsistent with Plaintiff's rights of procedural due process under the 14th Amendment of the Federal Constitution that, as a direct and foreseeable result, has caused Plaintiff harm.

39.

The action of Defendants showed a callous or reckless disregard for the rights of Plaintiff.

40.

Plaintiff is entitled to all remedies provided by 42 U.S.C. § 1983.

41.

As a further result of Defendants' wrongful actions, Plaintiff is entitled to recover reasonable costs and attorney fees incurred herein.

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42.

As a direct and proximate result of Defendants' wrongful actions, Plaintiff suffered emotional and mental injury including but not limited to post traumatic stress, anxiety, fear for the safety of her children, and depression. Plaintiff has been damaged due to the interruption of an interference with the relationship with her daughters caused by Defendants and that damage is valued at three hundred thousand ($300,000.00) dollars. Plaintiff has suffered mental anguish, anxiety, and permanent, detrimental interference with the parent-child relationship for damages in the amount of three million ($3,000,000.00) dollars.

43.

The actions of the Oregon Department of Human Services and caseworkers Chapman, Hickman, Meyer, and Beechinor acting in their individual capacity were malicious or reckless in disregard of the rights of Plaintiff and punitive damages in an amount to be determined should be awarded against Defendants to punish Defendants form wrongdoing and to prevent Defendants and others from acting in a similar manner in the future.

THIRD CLAIM FOR RELIEF

(Negligent Failure to Investigate, Supplemental Jurisdiction, 28 U.S.C. § 1367)

44.

Plaintiff re-alleges and reincorporates paragraphs 1 through 26 above.

45.

Pursuant to 28 U.S.C. § 1367 and under Article III of the United States Constitution, this Court may exercise supplemental jurisdiction over state claims so related to the claims in the action that form part of the case or controversy within which this court has original jurisdiction Pursuant to 28 U.S.C. § 1367 and under Article III of the United States Constitution.

46.

On October 1, 2015, Plaintiff filed a Tort Claim Notice with the State of Oregon pursuant to ORS 30.275, giving notice that damages would be asserted against Defendant Oregon Department of Human Services for negligence, misrepresentation and/or defamation.

47.

At all relevant times herein, the State of Oregon and Defendants owed a continuing duty to investigate the circumstances of the removal of Plaintiff's children and whether the decision to remove the children was consistent with the Federal Constitution and Federal laws, State laws and the administrative rules of the Oregon Department of Human Services.

48.

At all relevant times herein, the Oregon Department of Human Services had the power, right and duty to control and supervise the manner in which employees carried out the objectives of their employment, and to see that all orders, rules, instructions and regulations promulgated by the Children's Services Division, and the actions of its employees, are consistent with the Federal Constitution and Federal law and the laws of the State of Oregon. The Oregon Department of Human Services failure to investigate whether the removal of Plaintiff's children was consistent with federal laws and the federal constitution is an arbitrary deprivation of Plaintiff's fundamental liberties and substantive due process rights under the Fourteenth Amendment.

49.

Defendants' failure to investigate or undertake a reasonably adequate investigation of the circumstances by which Defendants unlawfully asserted authority while acting under color of state law to remove Plaintiff's children is an arbitrary deprivation of Plaintiff's fundamental liberties and substantive due process rights under the Fourteenth Amendment and the laws of the state of Oregon.

50.

At all relevant times herein, the Oregon Department of Human Services had a continuous duty to investigate the facts and circumstances of the removals and failed to do so. The failure to investigate the facts was so reckless or grossly negligent that misconduct was inevitable.

51.

Defendants owed a duty of care to Plaintiff to undertake a reasonable and comprehensive investigation which met the standard of care for determining whether indications of abuse and concerns raised by the Plaintiff were rational under the circumstances, had taken place or were occurring, and whether if the facts alleged by Defendants constitute adequate grounds for dependency jurisdiction.

52.

As a direct and proximate result of Defendants' wrongful actions, Plaintiff and Plaintiff's children suffered emotional and mental injury including but not limited to post traumatic stress, anxiety, fear for the safety of her children, and depression. Plaintiff has been damaged due to the interruption of an interference with the relationship with her daughters caused by Defendants and that damage is valued at three hundred thousand ($300,000.00) dollars. Plaintiff has suffered emotional distress in the amount of three million ($3,000,000.00) dollars.

FOURTH CLAIM FOR RELIEF

(Negligent Failure to Train and Supervise, Supplemental Jurisdiction, 28 U.S.C. § 1367)

53.

Plaintiff re-alleges and reincorporates paragraphs 1 through 26 above.

54.

At all relevant times herein, the Oregon Department of Human Services had the power, right and duty to control and supervise the manner in which employees carried out the objectives of their employment, and to see that all orders, rules, instructions and regulations promulgated by the Children's Services Division, and the actions of its employees, are consistent with the Federal Constitution and Federal laws. The Oregon Department of Human Services failure to adequately train or supervise its employees to carry out the duties of the agency in a manner consistent with federal laws and the federal constitution is an arbitrary deprivation of Plaintiff's fundamental liberties and substantive due process rights under the Fourteenth Amendment.

55.

At all relevant times herein, the State of Oregon had the power, right and duty to train the manner in which employees carried out the objectives of their employment in a manner consistent with State and Federal Constitutions and Federal and State Statutes and laws. Defendant Oregon Department of Human Services' failure to supervise or train its employees in this manner was so reckless or grossly negligent that future misconduct is almost inevitable.

56.

Plaintiff is entitled to all remedies provided by 42 U.S.C. § 1983.

57.

As a direct and proximate result of Defendants' wrongful actions, Plaintiff and Plaintiff's children suffered emotional and mental injury including but not limited to post traumatic stress, anxiety, fear for the safety of her children, and depression. Plaintiff has been damaged due to the interruption of an interference with the relationship with her daughters caused by Defendants and that damage is valued at three hundred thousand ($300,000.00) dollars. Plaintiff has suffered emotional distress in the amount of one million ($1,000,000.00) dollars.

58.

As a further result of Defendants' wrongful actions, Plaintiff is entitled to recover reasonable costs and attorney fees incurred herein.

59.

Plaintiff is entitled to an award of punitive damages in an amount to be subsequently amended or determined at trial.

FIFTH CLAIM FOR RELIEF

(42 U.S.C. § 1983; Violation of the 4th and 14th Amendments: Unreasonable Seizure; Unreasonable interference with Familial Association)

60.

Plaintiff re-alleges and reincorporates paragraphs 1 through 26 above.

61.

The Lane County Child Protective Services Division of the Oregon Department of Human Services has a custom and policy of seizing children from classrooms and subjecting them to custodial interrogations without a warrant, parental consent, or exigent circumstances, and a custom and practice of not informing the parents either during or after the interview. The Lane County Child Protective Services Division of the Oregon Department of Human Services has adopted this policy with callous disregard of Plaintiff's 14th Amendment substantive due process right to the direct care and protection of Plaintiff's children, and A.M.K.'s right to be free from unreasonable seizures pursuant to the 4th Amendment.

62.

The unlawful seizure of A.M.K. is a direct and proximate cause of the damages suffered by Plaintiff and A.M.K. as alleged in this Complaint.

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63.

The action of Defendants showed a callous or reckless disregard for the rights of the Plaintiffs.

64.

Plaintiffs are entitled to all remedies provided by 42 U.S.C. § 1983.

SIXTH CLAIM FOR RELIEF

(42 U.S.C. § 1983; 14th Amendments: Unreasonable interference with Familial Association against Rachel Cudmore, a Private Actor acting in collusion with the State)

65.

Plaintiff re-alleges and reincorporates paragraphs 1 through 26 above.

66.

At all material times herein, Rachel Cudmore was a private actor who colluded with Defendants and was a joint participant in the enterprise to interfere with the constitutional rights of Plaintiff. As a private counselor, Defendant Cudmore assisted DHS as a counselor and advocate for the agency in a function that is traditionally the exclusive prerogative of the state by actions that included but are not limited to; (a) Providing personally protected private health information of counseling sessions to the Oregon Department of Human Services and under the direction and supervision of Defendant Chandra Chapman and/or other state actors, without a release of information and without the permission or knowledge of Plaintiff Gillis; (b) documenting or attempting to document evidence of Plaintiff's alleged "mental injury" under the direction of Chandra Chapman and other DHS caseworkers; (c) alienating the children from Plaintiff under the direction and instruction of Defendant's Chapman and Beechinor by purposefully fabricating false statements and not disclosing statements of the minor children that would contradict or place the agency's position in a negative light, and: (d) by refusing to release information to Plaintiff as requested by Plaintiff but releasing said information to all other parties in the underlying dependency case.

67.

The action of Defendants showed a callous or reckless disregard for the rights of the Plaintiffs.

68.

Plaintiffs are entitled to all remedies provided by 42 U.S.C. § 1983.

SEVENTH CLAIM FOR RELIEF

(Declaratory Judgment, Proscriptive Equitable Relief)

69.

Plaintiff re-alleges and reincorporates paragraphs 1 through 26 above.

70.

Plaintiff asks this Court to find that pursuant to the rights and privileges of due process afforded persons under Fourteenth Amendment of the United States Constitution, the State of Oregon may not take a child into protective custody without a warrant or in the absence of imminent danger of serious bodily injury and further, that in order to take a child into protective custody the State must file a petition with a court of competent jurisdiction alleging imminent danger of serious bodily injury and the parent must be afforded adequate notice of the specific factual allegations upon which the State is basing its removal, and further that the parent must be afforded a post-deprivation evidentiary hearing within a reasonable time as proscribed by law in which the burden to establish grounds for removal rests with the State.

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71.

The regular custom and practice of the juvenile court of Lane County, Oregon of divesting parents of the right to an immediate, post-deprivation or probable cause hearing upon removal and placement of children in shelter care, protective custody or otherwise limiting contact to supervised visitation, in the absence of a contested hearing and by postponing the determination of whether children should be removed from the home until a jurisdictional hearing sixty or more days after first appearance, is an unconstitutional deprivation of procedural and substantive due process under the Fourteenth Amendment.

72.

Plaintiff hereby gives notice of a constitutional challenge to ORS 419B.185 as procedurally defective in affording a post-deprivation hearing, to the extent that ORS 419B.185 requires that the burden of proof is upon the parent to establish the absence of probable cause rather than on the State to prove the existence of probable cause that a child cannot return or remain in the home without danger of suffering physical injury, severe emotional harm, or harm to oneself or others.

73.

Plaintiff asks this Court to find that the continuation of indefinite temporary jurisdiction by the State Circuit Court, during which time Plaintiff's children were removed from Plaintiff's care for a period of time that is exceeding ten months, by disallowing a jurisdictional hearing until a modification of custody and parenting time petition can be adjudicated by the family court, does not constitute good cause and is an unconstitutional deprivation of Plaintiff's procedural and substantive due process rights afforded persons by the Fourth and Fourteenth Amendment of the United States Constitution.

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74.

Plaintiff asks the Court to find as a matter of law, the Defendants did not have consent or lawful authority to enter or consent to remove Plaintiff's children without a warrant, exigent circumstances or court order based on an affidavit of probable cause, and without evidence that the children were in imminent danger of suffering serious bodily injury, severe emotional harm, or harm to oneself or others.

75.

As stated herein, Defendants have wrongfully, unlawfully, and with deliberate indifference to the rights of Plaintiff, and with utter disregard to Defendants' duties and obligations to Plaintiff, acted, practiced and/or adopted policies, practices, procedures and/or customs which are in violation of the rights of Plaintiff, including those to be free from governmental interference as to Plaintiff's right of privacy and familial associations, and from unreasonable searches and seizures and related actions and proceedings to Plaintiff's right of familial association.

76.

DEFENDANTS' have failed to acknowledge their improper, unlawful and unconstitutional actions, conduct and policies at the time of the incidents at issue in the present action, and Plaintiff is informed and believes that Defendants have not changed or modified such actions, conduct and/or policies to conform to law.

77.

DEFENDANTS' wrongful and unlawful conduct, actions and/or policies, unless and until enjoined and restrained by order of this court, have caused, and continue to cause, great and irreparable injury to Plaintiff, and other individuals and citizens, in that Defendants will continue to act in accordance with said unlawful policies, and with deliberate indifference to their duties and obligations under federal law, including those under the Fourth and Fourteenth Amendments as alleged herein above.

78.

Plaintiff has not an adequate remedy at law to prevent or prohibit Defendants from continuing, and/or repeating, their unlawful and unconstitutional conduct and policies other than through injunctive relief, and therefore seeks an order enjoining and prohibiting the Director of the Oregon Department of Human Services from continuing to allow the following practices that have occurred in this case, upon which Plaintiff has based some or all of her claims and which is capable of repetition yet would otherwise evade review:

a. The policy and/or practice of detaining and/or removing children from their family and homes without exigent circumstances imminent danger of serious injury, court order and/or consent;

b. The policy and practice of removing children from the care of their family and from their homes without first obtaining a warrant or court order supported by affidavit of probable cause that imminent danger will occur if removal is not timely undertaken when no exigency exists;

c. The practice of requiring parties to appear at the original hearing without serving a summons and petition and then serving the parties for the first time at the courthouse immediately prior to the original hearing, thereby preventing the parties from being adequately apprised of the factual allegations against them or informing counsel of the allegations and jurisdictional grounds for removal prior to the original hearing;

d. The policy and practice of examining children without parental consent in the absence of exigency, need, or proper court order, and without the presence of their proper custodian and/or guardian;

e. The policy and practice of removing and detaining children, and not returning them, beyond a reasonable period after the basis for detention is negated;

f. The policy and practice of not working to reunite the child, and maintaining that there is no duty to reunify when the child has been removed and placed with the non-custodial parent as an "in-home" placement;

g. The policy and practice of state interference into private custody and parenting time orders by withholding children and or continuing dependency jurisdiction until such time as the parent with whom the children are placed by the agency files for a modification of custody and petitions for such terms as the agency deems appropriate.

h. The policy and/or practice of using trickery, duress, fabrication or misleading representations, and in failing to disclose exculpatory evidence, in preparing and presenting reports and court documents to the Court, causing an interference with the Plaintiff's rights, including, but not limited to intentionally withholding evidence for a lengthy period, usually 60 days from the date of removal of the children, before a "fact-finding" hearing is scheduled with the court for the purpose of pressuring parents to "admit" to allegations set forth in the petition. During this period from the removal of the child to the fact-finding hearing, when parents are without their children and denied a post-deprivation evidentiary hearing establishing grounds for removal by the State, it is a routine practice for employees of the Oregon Department of Human Services in Lane County to pressure parents to admit to allegations set forth in the petition for jurisdiction, in part by informing parents that if they admit to the allegations and forego a constitutionally protected jurisdictional hearing, the children removed from the home will be returned more quickly. This practice is undertaken with the full knowledge that parents are more likely to waive their constitutional right to a probable cause or jurisdictional hearing the longer the children have been removed from the home;

i. By acting with deliberate indifference in implementing a policy of inadequate training, and/or by failing to train officers, agents, employees and state actors, in providing the Constitutional protections guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, when performing actions related to dependency proceedings and removal of children from their families;

j. Aiding and abetting in the violation of civil rights guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, by engaging in the aforementioned conduct;

k. Conspiring to violate civil rights guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, by engaging in the aforementioned conduct.

WHEREFORE, Plaintiff prays for judgment against Defendants, as to all causes of action, as follows:

1. Plaintiff demands a jury trial as to the issues so triable;
2. As against all Defendants, general damages of $3,300,000.00, or in an amount to be subsequently amended or determined at trial;
3. Special damages according to proof but not to exceed $80,000.00;

4. As only against the individual Defendants, and not any public entity, Punitive Damages in the sum of not less than $500,000.00 or in an amount to be subsequently amended or determined at trial and otherwise allowed by law;

5. Declaratory and equitable relief as allowed by law.

6. For temporary, preliminary and permanent injunctive relief enjoining Defendant State of Oregon from engaging in practices set forth in paragraph 54, sections (a) through (k);

7. Reasonable costs and attorney fees incurred herein;

8. All legal and equitable remedies provided by 42 U.S.C. § 1983; and

9. For costs of suit and such other and further relief as the Court deems just

DATED this 4th day of May, 2017.

Respectfully Submitted,

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